

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA J. HINDERS and DEPARTMENT OF THE DEFENSE,
DEFENSE LOGISTICS AGENCY, Seattle, WA

*Docket No. 99-1219; Submitted on the Record;
Issued May 22, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuing compensation on or after November 15, 1989 on the grounds that appellant's disability related to her accepted work-related condition had ceased.

This case was before the Board on a prior appeal and a decision issued by the Board on March 26, 1988.¹ The Board previously held that the Office erred by denying appellant's claim for continuing compensation. The Board specifically determined that an impartial medical panel, comprised of Dr. Drew Brodtkin, an occupational medicine fellow, and Dr. Scott Barnhart, a Board-certified internist, did not provide a rationalized medical opinion addressing whether appellant's temporary aggravation of dermatitis and respiratory muscosal irritation had resolved by November 15, 1989, and whether appellant's multiple chemical sensitivity syndrome was causally related to the accepted employment injury. The Board remanded the claim for further medical development. The case was remanded for further medical development on those issues.

On September 11, 1998 the Office wrote to the impartial medical panel and requested a supplemental report addressing whether appellant's temporary aggravation of dermatitis and respiratory muscosal irritation had resolved by November 15, 1989, and whether appellant's multiple chemical sensitivity syndrome was causally related to the accepted employment injury.

In a report dated October 14, 1998, Dr. Brodtkin replied to the Office's request. Dr. Brodtkin noted that at the time of his evaluation on April 9, 1991, appellant was diagnosed with acute solvent-induced upper airway irritation, acute solvent-induced central nervous system affects and acute occupationally-induced contact dermatitis. He stated that "these conditions were felt to be self-limited, work-related conditions attributable to a variety of organic solvent chemicals and irritants in [appellant's] workplace." He further stated that appellant had a

¹ Donna J. Hinders, Docket No. 95-2141 (issued March 26, 1998). The history of the case as contained in the decision is incorporated by reference.

symptom syndrome that met the criteria of multiple chemical sensitivity syndrome, which is “characterized by generalized symptomatic responses triggered by very low levels of environmental chemicals in diverse classes. It was noted that chemical sensitivity syndrome “represents a symptom complex without an identified disease condition or definable impairment of any organ system.” He opined as follows:

“As I noted in my April 9, 1991 evaluation, [appellant] experienced significant improvement when she left the bindery area. Specifically during a two-week vacation in August 1989, she experienced substantial resolution of symptoms and when she was transferred to the warehouse office in October 1989 (between October 1989 and March 1990) she experienced significant improvement. It remains my assessment that the well-defined pathophysiologic disease processes which she experienced at that time, namely acute solvent-induced upper airway irritation, acute solvent-induced central nervous system affects, and dermatitis, would have resolved completely in the weeks following the October 1989 exposure.”

Dr. Brodtkin reported that, while appellant’s symptoms met the criteria for multiple chemical sensitivity syndrome, “the substantial improvement following exposure in the Bindery between October 1989 and March 1990 raise a question regarding the temporal association between generalization of symptoms and exposures, and make it unclear whether the organic solvents exposures experienced at the Bindery served as an ‘initiating exposure.’” He concluded, “The difficulty in identifying a temporal association between exposure and development of multiple chemical sensitivity, as discussed above, as well as the inability to define a pathophysiologic process for this symptom syndrome, does not allow me to attribute [appellant’s] symptoms to the Bindery exposure, on a more probable than not basis.”

In a decision dated November 9, 1998, the Office denied appellant’s claim for continuing compensation on or after November 15, 1989.

The Board finds that this case is not in posture for a decision.

Although the Office obtained a supplemental report from Dr. Brodtkin on remand, the Board finds his opinion to be vague as to whether appellant’s temporary aggravation of dermatitis and respiratory muscosal irritation due to the accept work injury had resolved by November 15, 1989. Dr. Brodtkin states that it would have resolved completely in the weeks following the October 1989 exposure, but he does not specifically state that appellant’s disability was resolved by November 15, 1989. The confusion arises because the physician also states that appellant experienced “substantial resolution” of her symptoms between October 1989 and March 1990. The Board is unclear whether it is Dr. Brodtkin’s opinion that appellant’s disability did not completely resolve until sometime after March 1990 as “substantial resolution” and total resolution are completely different terms, the former term allowing appellant to claim continuing disability compensation after November 15, 1989.

Additionally, Dr. Brodtkin’s opinion as to whether appellant’s multiple chemical sensitivity syndrome was causally related to the accepted employment injury is speculative.

Dr. Brodtkin specifically stated that it was “unclear” whether the organic solvent exposure appellant experienced at work served as an “initiating exposure” for his diagnosed syndrome.

When the Office obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist’s opinion requires clarification or elaboration, the Office must secure a supplemental report from the specialist to correct the defect in his original report. However, when the impartial specialist is unable to clarify or elaborate on his original report or if his supplemental report is also vague, speculative, or lacking in rationale, the Office must submit the case record and a detailed statement of accepted facts to a second impartial specialist for the purpose of obtaining his rationalized medical opinion on the issue.²

Consequently, the case is remanded for further medical development including referral of the case to a second impartial medical specialist. Thereafter, the Office shall issue a *de novo* decision.

The decision of the Office of Workers’ Compensation Programs dated November 9, 1998 is hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
May 22, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

² *Talmadge Miller*, 47 ECAB 673 (1996); *Harold Travis*, 30 ECAB 1071, 1078 (1979).